

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

HCA NO 3145/88

BETWEEN

JOHN MORALES

*Plaintiff*

AND

PORT AUTHORITY OF TRINIDAD & TOBAGO

AND

TRINIDAD & TOBAGO PORT CONTRACTORS LIMITED

*Defendants*

*Before: The Hon. Justice Nolan Bereaux*

Appearances: S Benjamin for Plaintiff

E Prescott & V Kokaram for Defendant

## **JUDGMENT**

The plaintiff is a retired worker of Trinidad and Tobago Port Contractors Limited. The Port Authority of Trinidad and Tobago by virtue of ownership of fifty percent of ordinary share capital of Trinidad and Tobago Port Contractors Limited is in control of the second defendant. The second defendant is a limited liability company registered under the Companies Ordinance, Chapter 31 No. 1 of the Laws of Trinidad and Tobago 1950 Rev. ed. and is a subsidiary of the Port Authority of Trinidad and Tobago. The Port Authority of Trinidad and Tobago, during the course of rationalisation of port operations, took over the complete administration and operation of Trinidad and Tobago Port Contractors Limited. I shall refer to the first defendant as the “*Port Authority*” and the second defendant as “*Port Contractors Limited*”.

## **The Statement of Claim**

It is necessary to refer in some detail to the Statement of Claim. The plaintiff, by his amended statement of claim filed on 9<sup>th</sup> May, 1998 contends that he entered the port industry on 2<sup>nd</sup> February, 1940 as a stevedore attached to Geo F Huggins & Company, a unit member of the Shipping Association of Trinidad & Tobago. The Association was a body consisting of the commercial firms engaged in various aspects of cargo handling on the ports of Trinidad & Tobago

The plaintiff contends that:

- (1) Arising out of negotiations between the Seamen & Waterfront Workers Trade Union (“SWWTU”) and the Shipping Association, a Shipping Association Pension Scheme was introduced into the port industry to cover all workers of the association with effect from 1945. Following an actuarial evaluation, the association paid the sum of \$505.09 into the Shipping Association Pension Scheme to cover the back-services of the plaintiff for the years 1940 to 1953. For the years 1953 to 1962, the plaintiff paid five percent of his earnings as his pension contribution into the Shipping Association Pension Scheme. The Shipping Association, as employer, contributed a sum equal to ten percent of the plaintiff’s earnings into the Scheme.
- (2) During 1963, he was promoted to the monthly-paid staff of Geo F. Huggins & Company; his pensionable service for October 1963 was covered by two life insurance policies with the Standard Life Assurance Company. These policies were contributed to by both worker and employer.
- (3) He remained so employed until 31<sup>st</sup> July, 1969. On 1<sup>st</sup> August, 1969, Port Contractors Limited was launched to oversee longshoring and stevedoring operations. This resulted in the transfer of a number of workers from the firms of the Shipping Association to Port Contractors Limited, the plaintiff among them.

The plaintiff joined Port Contractors Limited on 1<sup>st</sup> August, 1969 as a monthly-paid worker in the stevedoring section. It was an agreement between Port Contractors Limited, the SWWTU and the Shipping Association that Port Contractors Limited would be responsible for the accrual benefits of the workers including the plaintiff while they worked with the association's firms.

- (4) Following negotiations during 1972 to 1973 between the SWWTU and Port Contractors Limited, the Port Contractors Pension Scheme was introduced to cover all its monthly-paid workers with effect from 1<sup>st</sup> August, 1969. From 1<sup>st</sup> August, 1969 to his retirement on 25<sup>th</sup> June, 1986 the plaintiff paid five percent of his salary into the pension fund with Port Contractors Limited paying a sum equal to ten percent of the plaintiff's salary into the pension fund.
- (5) In order to meet the condition set out by Port Contractors Limited relevant to the preservation of his accrual benefits with his former employer, the plaintiff paid into that company's pension scheme the sum of \$1,827.88 representing the cash surrender value as at 1<sup>st</sup> January, 1970, of the two life insurance policies with Standard Life Assurance Company, so that there would be no break in his pensionable service on his transfer to the company. All funds belonging to the Shipping Association's Pension Scheme were also handed over to the company under the agreement that the workers' benefits covered in the said Shipping Association Pension Scheme will be honoured by the company.
- (6) At the time of the plaintiff's retirement on 25<sup>th</sup> June, 1986, he was entitled to pension benefits from the company for service to the port industry during the period February, 1940 to March, 1963 and from October, 1963 to August, 1969 as follows:

- (a) Shipping Association - February, 1940 to March, 1963
- (b) Port Contractors Limited-
  - (i) October, 1963 to August, 1969
  - (ii) September, 1969 to June, 1986

The plaintiff seeks a declaration that he has more than forty years pensionable service with the port industry as follows:

- (a) Shipping Association - 23 years 1 month
- (b) Port Contractors Limited - 22 years 8 months

An order that he be paid pension benefits:

- (a) From February, 1940 to March, 1963
- (b) From October, 1963 to August, 1969

under the Shipping Association Pension Scheme and the Port Contractors Pension Scheme respectively. Interest on the pension at 15% from 25<sup>th</sup> January, 1989 to the date of settlement.

### **The defence**

The main planks of the defence are set out at paragraphs 5 to 15 in the following terms (starting at paragraph 5):

- (5) The said Shipping Association was at all material times an association of private commercial enterprises engaged in Trinidad and Tobago in the business *inter alia* of ship chandlers, importers and exporters of merchandise and employers of stevedores, lightmen coopers and other related categories of workers in the shipping and/or port industry.
- (6) In or around the year 1952 a gratuity scheme was introduced in the said shipping industry in Trinidad and Tobago and all permanent employees or members of the

Shipping Association engaged on the docks or on the ports of Trinidad and Tobago became members of that scheme and were given credit for their years of service in the shipping industry prior to the year 1952. The plaintiff was not at any material time a member of the Shipping Association or of the gratuity scheme.

- (7) On or about the 4<sup>th</sup> day of February, 1962 the said gratuity scheme was terminated and benefits and back-service pensions which had accrued thereunder to members were converted and credited to the benefit of the members in a new Shipping Association Pension Scheme with effect from on or about the 5<sup>th</sup> day of March, 1962. All the benefits and back-service pension were credited in accordance with an actuarial valuation and represented the members' full benefit in the gratuity fund as at the 31<sup>st</sup> day of January, 1962.
- (8) The plaintiff was not at the material or at any time prior to 31<sup>st</sup> day of January, 1962, a member of the said pension scheme, nor was the sum of \$505.09 or any other sum paid into the new pension scheme or to the credit of the plaintiff.
- (9) The plaintiff did not pay the alleged or any pension contribution nor were the said contributions paid for the period alleged.
- (10) The plaintiff's employment with Geo F Huggins and Company commenced on or about the 1<sup>st</sup> day of April 1961 and continued until he accepted employment with and/or was transferred to the second defendant on or about the 1<sup>st</sup> day of August, 1969 without loss of benefits.
- (11) A pension plan was introduced for the benefit of monthly-paid workers of the second named defendant. The plan, the Trinidad and Tobago Port Contractors Limited Staff

Pension Plan, was effected by a Trust Deed and Rules dated the 17<sup>th</sup> day of August, 1969.

- (12) There was no agreement or arrangement that upon the payment of the sum of \$1,827.88 there would be no break in the pensionable service of the plaintiff.
- (13) The plaintiff's pensionable service with the second named defendant was from the 1<sup>st</sup> day of August, 1969 to the 25<sup>th</sup> day of June, 1986 and the plaintiff's pensionable service was computed in accordance with the Trust Deed and Rules.
- (14) Upon the plaintiff's retirement all benefits payable or accrued due to the plaintiff as at the 26<sup>th</sup> day of June, 1986 were computed and paid to the plaintiff as follows:
  - (i) a lump sum of \$64,282.39, and
  - (ii) a monthly pension of \$1,285.65
- (15) The plaintiff was a member of the pension scheme plan from the 1<sup>st</sup> day of August, 1969 and was paid all benefits including pension benefits due to him pursuant to the said pension plan.

### **Issues**

The question of whether the plaintiff was entitled to be paid back-service for the period February 1940 to March 1963 and from October 1963 to August 1969 turns on the status of the plaintiff's employment in the shipping industry prior to entering the employment of the company on 1<sup>st</sup> August, 1969. That requires a detailed examination of the facts and evidence adduced at trial.

### **The Evidence**

An agreed bundle of eighteen documents marked A1 to A18, was put into evidence by consent.

The plaintiff, in addition to giving evidence on his own behalf called four other witnesses in support: Mr Alfred Grant, Mr Ulric Dougan, Mr Nigel Picou and Mr Victor Rudulpho.

### **Evidence of John Morales**

Mr Morales testified that he commenced working in the port industry on 2<sup>nd</sup> February, 1940 when he was employed as a stevedore with Geo F. Huggins & Company which belonged to the Shipping Association. According to the plaintiff, he was employed with the Shipping Association from 1940 to 1962 as a daily-paid worker. I refer to the Shipping Association rather than Geo F Huggins & Company because other than his initial reference to that company the plaintiff referred to his employer during that period as the Shipping Association.

He said that he contributed five percent of his salary to what he called the Shipping Association Pension Scheme. He added:

***“We called it a pension scheme, it was mostly a pension scheme. When the scheme was established, a payment of \$505.09 was paid into the scheme on my behalf. The Shipping Association made the payment.”***

The payment was made to begin “*a pension or gratuity scheme*” on behalf of the members of the Shipping Association.

Mr Morales could provide no specifics as to when the payment was made, by whom or to whom. He said he began working with Geo F. Huggins & Company as a monthly-paid worker “*in 1963 thereabouts*”. He added that Geo F Huggins & Company had its own pension scheme with Standard Life Assurance Company and he was a member of that scheme. He worked at Geo F. Huggins & Company until 1969 when he moved to Port Contractors Limited. The plaintiff stated that when he joined the company:

***“Geo F. Huggins & Company sent me over to Standard Life and at Standard Life I was given \$1,800.00 as my pension from Geo F Huggins and on receipt of that \$1,800.00, I proceeded to give Mr Dougan who was Personnel Manager of the Port Contractors Limited, the \$1,800.00 and he gave me a receipt with the original signed by Mr Dougan.”***

The sum of \$1,800.00 referred to by Mr Morales was in fact the sum of \$1,827.88 as pleaded in the statement of claim which sum the plaintiff, during cross-examination, later accepted as correct. The plaintiff testified that he made the payment to Mr Dougan *“so that my service would continue”*.

The witness sought to testify as to certain advice given to him by one *“Mr De Souza”* from Port Contractors Limited with respect to payment of the sum of \$1,827.88. This evidence was objected to by Mr Prescott on the ground that, *inter alia*, it was hearsay. The oral evidence was taken *de bene esse* and a ruling deferred until my decision.

In my judgment, the advice would normally be admissible for the fact that it was given. But, in this case, what is in issue is whether there was an agreement or arrangement for the payment of the sum in question and thus it is a matter which goes to truth. To that extent the purported advice given to him is hearsay and inadmissible.

Mr Morales added that:

***“When I made the payment in the presence of the then accountant who is now dead, Mr Dougan said that this money was to go towards my pension.”***

He added that he retired in 1986 but was not paid pension benefits for the period of service prior to his service with Port Contractors Limited and the Port Authority. During his period of employment with the Shipping Association, he

was a member of the Shipping Association Pension Scheme. When he moved to Geo F. Huggins & Company he became a member of the pension scheme of that company and when he moved to Port Contractors Limited he became a member of the pension scheme of that company.

Mr Morales was extensively cross-examined by Mr Prescott and made a number of admissions which did not assist him. He was challenged by Mr Prescott on the date of his assumption of duty at Geo F. Huggins & Company. Exhibit "A5", a letter from Geo F. Huggins & Company dated 16<sup>th</sup> January, 1986 addressed to the Secretary of the Monthly Staff Pension Plan of the Port Authority, gave the date of Mr Morales' employment as 1<sup>st</sup> April, 1961. Mr Morales' response was that he could not remember the date when he was employed at Geo F. Huggins & Company and he did not know whether that was in fact the date when he commenced working at Geo F. Huggins & Company. He conceded that other persons whose names were mentioned in Exhibit "A5" did work at Geo F. Huggins & Company at the same time as he.

He added that the cash surrender value of the life insurance policies was paid to him when he left that company's employ. Pressed by Mr Prescott as to his business options with the sum of money he received the plaintiff stated:

***"Yes, I understood that I could do whatever I wanted with the moneys I had received."***

He conceded as well that upon surrender of the policies he was no longer *"going to be a member of the Huggins Pension Plan"* and that when he took up employment with Port Contractors Limited he was no longer a member of the Geo F. Huggins & Company Pension Plan.

With respect to the purchase of his back-service at Geo F. Huggins & Company, he said, in answer to Mr Prescott, that on paying the money over to Mr Dougan, he did not ask Mr Dougan if he could have back-service credited to him. He did

not know who were the trustees of the Port Contractors Limited Pension Plan nor did he know who comprised the Management Committee of the Port Contractors Pension Plan. Mr Morales provided no details about the payment of the sum of \$1,827.88 and what transpired between him and Mr Dougan when it was made.

With respect to the payment of the sum of \$505.09 to cover the back-service of the plaintiff for the years 1940 to 1953, Mr Morales could give no dates, nor could he identify the person by whom or to whom it was paid. According to Mr Morales:

*“The sum of \$505.09 was not paid by me, it was paid on my behalf. I don’t know to whom, it was paid to an insurance company, some money was paid to an insurance company to my credit. I don’t know if it was meant to represent the value of my pensionable service.”*

He added that it was after the sum of \$505.09 was credited to him that he began paying contributions. These contributions continued until his “*promotion*” to the staff of Geo F. Huggins & Company.

Mr Morales could not support his oral evidence with any documentary evidence of the contributions alleged to have been made by him. Significantly, the plaintiff conceded that when he first commenced working in the port industry it was as a casual labourer. He would report to the port on a daily basis, his name was called and he was given an assignment from day to day.

He was again referred to Exhibit “A5” and on this occasion conceded that he commenced permanent employment with Geo F. Huggins & Company “*around 1<sup>st</sup> April, 1961*” when he became a monthly-paid employee. Mr Morales insisted that he was a member of a gratuity scheme for stevedores prior to joining Geo F Huggins & Company in 1961. However, when shown Exhibit “A17”, which is a

register of all participating members of the scheme and on which his name did not appear, he could give no rational explanation as to why it did not.

In re-examination, the plaintiff stated that although he received the cash surrender value of the policies and paid them to Mr Dougan, the life insurance policies continued in force and he continued to pay the premium on each of them. He added that the sum of \$1,827.88 was never returned to him. According to the plaintiff, Mr Dougan accepted the money and he was made to believe that it would go to Port Contractors Limited

### **Evidence of Alfred Grant**

Mr Grant testified that he commenced working in the port industry in or around November, 1940. He retired in 1986. He knew the plaintiff. He first met him sometime between 1940 to 1942. They were both young men working at the Port. There was no shipping association in charge of stevedoring at the time and he worked with a gentleman whom he referred to as a foreman until the Shipping Association took over stevedoring operations. He then worked with the Shipping Association right up to the formation of Port Contractors Limited in 1969. He was a daily-paid worker with the Shipping Association until he joined Port Contractors Limited.

According to Mr Grant, there was a pension scheme with the Shipping Association which came into being in 1962. Prior to that there was a non-contributory gratuity scheme. This latter scheme was replaced by the pension scheme. Moneys and benefits accruing to workers in the gratuity scheme went towards the pension scheme. When the pension scheme was introduced he fell under its provisions. It was a joint contributory scheme. He was still daily-paid. He said that after 1969, in his new position at Port Contractors Limited, he was credited with his service from his initial date of employment in November, 1940. He came to be employed at Port Contractors Limited because he applied for the vacant post of Industrial Relations Officer. His pension under the Shipping Association Pension Scheme was transferred to the Port Contractors Limited

Pension Fund for monthly-paid employees, after negotiations between the SWWTU and Port Contractors Limited.

When he retired from Port Contractors Limited in 1986, his pensionable benefits were calculated from his initial employment in November, 1940. Cross-examined by Mr Prescott, Mr Grant admitted that his name appeared on the register at Exhibit "A-17" and that he did not have to pay to get his back-service credited when his pensionable service was transferred to the Port Contractors Limited Pension Scheme.

### **Evidence of Ulric Dougan**

Mr Dougan was an important witness for the plaintiff. He testified that he was employed at Port Contractors Limited in the position of personnel manager from October/November, 1969 to March, 1977. As personnel manager his responsibilities included the keeping of records of all employees. When he assumed duties at Port Contractors Limited, that company was in the process of assuming control of all cargo handling work, including longshoring and stevedoring. The pensionable service of all workers, over whom control was assumed, was to be honoured by the Port Contractors Limited. Mr Dougan stated that the pensionable service was to be taken into account on two bases.

- (1) in deciding how much leave the worker would enjoy,
- (2) in deciding how much pension the worker was entitled to on retirement.

His duties covered the "*personnel element*", i.e. hiring, firing, leave, applications and matters of discipline. They also included calculating the quantum of pensionable benefits. He also negotiated contracts with the union or assisted in negotiations as part of the negotiating team.

He knew John Morales when he was employed at Geo F. Huggins & Company. Mr Dougan said that *“according to the records which came to him”*, Mr Morales was employed at the port from 1941. As he put it:

*“From the records of my department which the company accepted, they showed that when Mr Morales joined the Port Contractors Limited in August, 1969, he had 29 years service with the Port.”*

The year “1941” referred to by Mr Dougan was inaccurate, Mr Morales himself having testified that he started in the port industry in 1940. The inaccuracy was later conceded by Mr Dougan during cross-examination by Mr Prescott. The “record” which was produced in support of Mr Morales’ 29 years service was Exhibit “A12” which is a form completed by Mr Morales himself upon commencement of his employment in 1969 with Port Contractors Limited which sets out certain personal particulars relating.

Since it was completed by Mr Morales himself, it did not provide independent verification of his years of pensionable service. Mr Dougan was also shown Exhibit “A16” which is self described as a *“pension computation form”* and which, from the signature below, appears to have been compiled by an employee of the Port Authority. That document gave the date of pensionable service as being from 1<sup>st</sup> August, 1969 to 25<sup>th</sup> June, 1986. Mr Dougan’s response when shown this document by Mr Benjamin was that:

*“..... based on the records of the personnel department, his service is much more than that. The date is wrong and based on my personal knowledge this information is wrong. The correct date should go back to 1941. The pensionable service should go back to some date going back to 1941, somewhere in 1941, when he started. The year should be 1941.”*

Of course, Mr Dougan was later forced to concede that the year of commencement of Mr Morales in the port industry was 1940. Other than Exhibit "A12", no "record" was tendered which provided any independent corroboration of the fact that the defendant had accepted that the plaintiff had twenty-nine years pensionable service. As to the basis of his personal knowledge that the information in Exhibit A16 was wrong, Mr Dougan kept this within his bosom.

He added that at the time of the plaintiff's joining Port Contractors Limited, the plaintiff had accumulated five years and ten months pensionable service at Geo F. Huggins & Company and was one of several monthly workers who joined Port Contractors Limited on 1<sup>st</sup> August, 1969, having previously worked in various sections of the Shipping Association. According to Mr Dougan:

***"The policy of the Port Contractors with regard to these monthly-paid workers was that their past service with their former employer would be honoured with regard to both leave and pension."***

He did not then provide any detail with respect to the "policy", that is to say: when it was formed, by whom and for what reason. He added that there were about fifteen monthly-paid workers who, having joined Port Contractors Limited were paid off their pension benefits by their former employers. According to Mr Dougan:

***"The Port Contractors policy was, hand over to us that benefit and your pensionable service will continue without breaking."***

Only the plaintiff took up the offer, but there was no machinery at Port Contractors Limited to utilise the two life insurance policies which Geo F Huggins had handed over to Mr Morales.

Said Mr Dougan:

*“the company could do nothing with the policies so it was agreed that the company would accept the surrender value of those policies at the date of his joining and that would satisfy the requirement.”*

It is noteworthy that Mr Dougan resorted to the third person in speaking of the “agreement” to accept the surrender value and pointed to no one in particular as having agreed with the arrangement on behalf of Port Contractors. To support this evidence, Mr Dougan referred to Exhibit “A13” which is a departmental memorandum he wrote as Personnel Manager to the Chief Accountant concerning the plaintiff. The memorandum enclosed a cheque submitted by the plaintiff in the sum of \$1,827.88 to be paid into the Staff Pension Fund. It reads as follows:

*February 21, 1974*

*Personnel Manager*

*Secretary/Chief Accountant*

*Mr John Morales*

*Mr Morales has submitted the enclosed cheque for \$1,827.88 the proceeds of which should be paid to the Staff Pension Fund.*

*This sum represents the cash surrender value at 1/1/70 of the policies of insurance covering Mr Morales pension arrangement under the Geo F Huggins Plan.*

*The cash value at date of maturity of these policies is \$4,942 but Mr Morales prefers to retain the policies and make the above payment which is acceptable.*

*This amount will cover the period of back-service of 5 years 10 months immediately preceding his transfer to the company, an arrangement which has been agreed upon by Management/Union.*

*U Dougan  
Personnel Manager*

*cc Managing Director*

The memorandum as a document created by Mr Dougan, does not provide independent corroboration of any agreement between “Management/Union” and it is noteworthy that the document does not refer to any date or meeting when this “arrangement” was agreed

It must be noted as well that from the terms of this memorandum the insurance policies were not surrendered. The plaintiff merely paid the equivalent of cash surrender value of the policy.

The witness added that by the payment of this sum, the plaintiff’s pensionable service of five years and ten months with Geo F. Huggins & Company would be honoured by Port Contractors Limited and as such, the information in Exhibit “A16” was wrong.

With respect to the plaintiff’s service prior to 1963, Mr Dougan stated that the “records” reaching him when he joined the company in 1969 showed that the plaintiff, Mr Morales, had been a daily-paid stevedore prior to his “promotion” as a monthly-paid employee at Geo F Huggins. All the stevedores taken from the jurisdiction of the Shipping Association were covered by a pension scheme. That pension scheme was assigned to the Port Contractors. All moneys in that plan were handed over to the Port Contractors Limited. The Port Contractors Limited was under an obligation to honour the service and Mr Morales’ service from 1940

to 1963 would be pensionable service in accordance with the terms of the take over.

Mr Dougan sought to testify as to the plaintiff's pre 1963 entitlements but that evidence was of no assistance to the plaintiff. The plaintiff's case is that the sum of \$505.09 on his behalf enabled him to purchase back-service prior to 1950-53 and that he was a member of both the Shipping Association Gratuity Scheme and the Shipping Association Pension Plan. Mr Dougan provided no details on whether the plaintiff was such a member or not.

Mr Dougan was rigorously cross-examined by Mr Prescott. He did not emerge unscathed. He had to concede that Mr Morales commenced working at the Port in 1940. He was also forced to concede that when he, Dougan, began working at Port Contractors Limited, he began not as personnel manager as he initially asserted but as personnel officer in the personnel division. He was forced to admit that he acted for Mr Morales as his attorney-at-law and that as the plaintiff's initial attorney-at-law it was he who raised the challenge to the amount of pension which had been paid to the plaintiff. The witness asserted however, that:

***“I ceased to act as his attorney in relation to the challenge as soon as he indicated that he would take the matter to court.”***

The assertion is demonstrably untrue. The plaintiff's original statement of claim which was filed on 29<sup>th</sup> June, 1988 bears the name of Mr Dougan as the advocate who settled the pleading. It would seem therefore that his withdrawal came sometime after the filing of the statement of claim. The witness insisted under cross-examination that the processing of pensions was dealt with by his division. Miss Anselma Lee Ghin who dealt with the pensions portfolio was initially one of his assistants.

Confronted with Exhibit “A6”, a letter dated 29<sup>th</sup> November, 1979 from Bacon Woodrow & de Souza (Consulting Actuaries) addressed to Miss A Lee Ghin as “*Secretary, Management Committee, Trinidad & Tobago Port Contractors Limited Monthly Pension Scheme*”, Mr Dougan’s response was that he left Port Contractors Limited in 1977 and that during his period at Port Contractors Limited, he was not aware that there was a management committee established to deal with pension matters. Nor did he know that Miss Lee Ghin functioned as its secretary. As personnel manager he supervised the person who processed pension applications. Membership in the pension plan, said he, was “*automatic*”. As long as you were monthly-paid, money was deducted automatically from your salary for pension purposes. He was familiar with the rules of the pension plan, but was unable to say which officer determined whether a person satisfied the conditions of membership. He was then forced to concede that there were criteria which affected eligibility for membership. He was also forced to concede that it was the management committee which determined eligibility and what constituted pensionable service for members of the plan.

Mr Dougan was also forced to admit that the question of “*back-service*” was a matter not to be determined by him but by the Management Committee. But as far as he was concerned, the issue of back-service for the plaintiff had been determined by the management of Port Contractors Limited and the Union and not the Management Committee of the Port Contractors Pension Plan. As far as he knew there was no management committee in existence at the time the decision with respect to Mr Morales was made. Mr Dougan was shown Exhibit “A3”, a letter dated 6<sup>th</sup> December, 1973 from the plaintiff addressed to the Management Committee, Pensions seeking to have his back-service credited to him at Port Contractors Limited.

That letter reads as follows:

*T & T Port Contractors Ltd  
Stevedoring Dep't  
December 6, 1973*

*The Management Committee  
Pensions  
Port Contractors Ltd*

*Dear Sirs*

*Pensions*

*I have been employed in the Port as a Stevedore from 2<sup>nd</sup>  
February, 1940.*

*After the pension negotiations in 1962, \$505.09 were credited to  
me after actuarial valuation; thereafter I was transferred to Geo  
F Huggins & Co. Ltd with the promise that my service and my  
benefits will at all times be preserved for me.*

*In 1969, with the advent of T & T Port Contractors, my pension  
plan at Geo F Huggins & Co. in the form of two (2) Endowment  
policies were turned over to me; the cash surrender value of  
these policies as at 31.12.69 could be ascertained from the  
attached list.*

*Therefore, for the purpose of continuing my service between the  
period 1963-1969, I enclose a cheque covering the cash  
surrender value of the two (2) policies.*

*Hoping that this will meet your approval.*

*I remain  
Yours faithfully*

*John Morales  
Co-ordinator, Pointe-a-Pierre*

*c.c. Seamen & Waterfront Workers  
Trade Union*

Mr Dougan's response was that he never saw that letter before, but continued to insist that there was no management committee in 1973. He admitted to having no personal knowledge of Mr Morales' period of service in the port industry.

In answer to the Court, Mr Dougan stated that he worked at the port for four years after the payment of the sum of \$1,827.88 by Mr Morales and never knew that that sum was not accepted to pensionable service of Mr Morales. He denied, however, that the reason he did not know was because the payment of pensions did not fall within his portfolio as personnel manager.

With respect to the alleged "*policy*" decision to accept the purchase of Mr Morales' back-service, Mr Dougan, in answer to the court, stated that the decision was made by the board of directors. He knew of this "*board*" decision through the managing director. Oddly enough this was never elicited from Mr Dougan, in examination in chief. The decision, he said, was conveyed to workers through meetings with the Union. I found these answers to be unconvincing. I would have expected Mr Dougan to have stated this in his evidence in chief rather than have it elicited by me at the end of re-examination. His initial evidence as to a "*policy*" decision was vague and imprecise. He could not recall the decision ever being reduced in writing, but said that it "would have been" reflected in the minutes of board meetings.

In answer to my specific question as to who agreed that the company would accept the surrender value of Mr Morales' policies, Mr Dougan's unconvincing response was that:

***"This would have been instructions from the managing director. Those instructions came to me. He instructed me that the acceptance of the cash surrender value is ok. I did discuss it with him. These instructions were oral."***

In addition to Mr Dougan being unconvincing and tentative in his answer, it was more than a little odd that these details were not proffered in his examination in chief.

On further cross-examination by Mr Prescott, Mr Dougan was unable to answer why the board's decision was not put in writing. He said that the managing director gave him instructions to accept the cash surrender value of the plaintiff's policies following the negotiation of the pension scheme, some time towards the end of 1973. But, Mr Morales' letter to the Management Committee, Exhibit "A3", makes no mention of any board decision and seems to be a unilateral effort by the plaintiff to secure approval from the management committee for his service with Geo F. Huggins & Company to be accredited to him at Port Contractors Limited.

### **Evidence of Neil Picou**

Mr Picou testified that he started working in 1941 with Alcoa Steamship Company. He was a casual worker. After 1947, he left to work with Furness, Withy & Company, also a member of the Shipping Association. He worked there up to 1969 when he started working with Port Contractors Limited. Port Contractors Limited was formed to take over the stevedoring operations of the Shipping Association, including Furness and Withy. He knew the plaintiff since 1942. He recalled that the plaintiff worked with Geo F. Huggins & Company. He added, however, that:

***"I can't say exactly how long he worked in the port industry but from 1942 he never left the port."***

He, too, spoke of the gratuity scheme which he said was introduced sometime in 1954 and was changed to a contributory pension plan in 1962. The actuarial value of the non-contributory gratuity scheme was transferred to the latter plan and credited to him. He added that though he was a casual worker, when he retired in 1987, his period of casual employment was later taken into account in

calculating pensionable service. This, he said, was consistent with a speech given in 1969 by the then Chairman of the Port Contractors Limited, Mr Bruce Procope. He received no written confirmation of what Mr Procope had said.

### **Evidence of Victor Rudolpho**

Mr Rudolpho was the final witness for the plaintiff. He testified that he worked with Alstons Shipping and later with Port Contractors Limited. He started at Alstons Shipping in 1958. He knew the plaintiff. They met “*casually*” while the plaintiff worked at Geo F. Huggins & Company. He started with Port Contractors Limited in August, 1969. There were negotiations between Port Contractors Limited and the SWWTU. They, the new Port Contractors Limited workers, were later told by the manager, stevedoring, that they could purchase their back-service with money given to them as pension for their services at their respective companies. He had been paid his terminal benefits out of a Provident Fund set up at Alstons Shipping. He chose to keep his money. The plaintiff was the only person who paid over his money to Port Contractors Limited. He knew of it because the plaintiff discussed it with other workers including Mr Rudolpho, urging them to do as he did.

Mr Rudolpho added that when he retired from Port Contractors Limited he was paid his pension benefits calculated as at the date on which he joined Port Contractors Limited in 1969. He added that the arrangement for the back-service was never communicated in writing. Everything was by “*word of mouth*”.

### **Evidence on behalf of the defendant**

The first defendant called one witness, Mrs Elva Stuart-Toussaint. She holds the office of personal assistant and secretary to the Management Committee, Pensions at the Port Authority. I shall say at once that Mrs Toussaint’s evidence condescended to the type of detail and accuracy required to support the defendant’s case, a feature which was sorely lacking in Mr Dougan’s evidence.

As secretary of the Management Committee, Pensions, she reported to the Management Committee Pensions. In her capacity as personal assistant she reported to the Manager, Human Resources. As secretary to the management committee she succeeded Miss Lee Ghin. Prior to her employment with the Port Authority, she worked with Port Contractors Limited from October 1969 to sometime in 1979 when it became the Port Authority of Trinidad and Tobago. She held the post of secretary to the Management Committee. As secretary to the Management Committee, she has access to the records of pensions from its inception.

From the records available, Mr Morales worked in the port industry from 1940. It is correct that he joined the staff of the Port Contractors from 1<sup>st</sup> August, 1969. As to the payment of the sum of \$1,827.88 by Mr Morales to Mr Dougan as personnel manager, from her knowledge of the records of pensions, that sum of money never reached the Management Committee. Mr Morales never got credited with back-service from the payment of that sum. From her knowledge of the records, Mrs Toussaint said that there was no agreement or arrangement which would have permitted the plaintiff to have continued his service at Geo F. Huggins & Company into that at Port Contractors Limited. The trust deed and attending rules governed the payment of pensionable service and they contained no reference to any agreement or arrangement to give effect to the payment of back-service to Mr Morales. The Management Committee oversaw and controlled the administration of the pension plans at the Port Authority. Any matters involving members of the plan must be processed and approved by the Management Committee. Moneys paid into the plan are paid to the trustee of the plan, First Citizens Bank Mortgage Trust Co. Prior thereto, the trustee was the Workers Bank of Trinidad and Tobago.

She added that Mr Morales was part of a group of monthly-paid workers who came from Geo F. Huggins & Company. There were others such as Mr Rudolpho who came from other shipping companies. In relation to those monthly-paid

workers, they had private arrangements with their employers concerning their pension benefits.

She said that pension benefits were computed by the personnel department from personnel data. When shown Exhibit "A13" (the memorandum from Mr Dougan as personnel manager to the chief accountant), she reiterated that there was no arrangement with the Management Committee to have back-service credited to Mr Morales by payment of the sum of \$1,827.88. There was no acceptance by the Management Committee of pensionable service from 1940 to 1969. Those persons entitled to back-service for pension purposes were those persons whose names appeared on the register at Exhibit "A17", they included Mr Picou and Mr Grant. They were workers who were members of the gratuity scheme in 1950-53 and were later accepted as, or became members of the Shipping Association Pension Plan. Mrs Toussaint said that the gratuity scheme was an arrangement made by companies of the Shipping Association for their daily-paid workers for the benefit of their relatives in the event of death. It was non-contributory. That scheme was terminated in 1962 upon the commencement of the Shipping Association Pension Plan. I understood her evidence to be that the register at Exhibit "A-17" came into being in 1962 when members of the previous gratuity scheme were credited with back-service for the purpose of the Shipping Association's Pension Scheme.

The plaintiff's name did not appear on the register. As at the date of the Shipping Association Pension Plan, the plaintiff was employed at Geo F. Huggins & Company. Exhibit "A-5", a copy of which forms part of the records of her department, showed that Mr Morales was employed at Geo F Huggins from 1<sup>st</sup> April, 1961. He became a member of the Huggins Pension Plan on 1<sup>st</sup> January, 1964, as Exhibit "A-8" indicated. Exhibit "A-8" also formed part of her department's records. She added that the plaintiff's pensionable service was calculated from 1<sup>st</sup> August, 1969 to 25<sup>th</sup> June, 1986, and he had been paid benefits in respect thereof. This was computed from document "A-16" which is a pension computation form from the Human Resources Department and would have been

generated upon the plaintiff's retirement in order to compute his retirement benefits.

She added that the plaintiff was credited with thirty-one days leave while at Port Contractors Limited. However, leave entitlement was dealt with by the Human Resource Department. Pension entitlements are calculated according to the length of service and leave entitlements are not taken into account in that calculation.

With respect to the alleged payment of the sum of \$505.09 to cover back-service for the plaintiff for the period 1940 to 1953, Mrs Toussaint testified that that sum was never handed over to the Port Authority by the Shipping Association Pension Scheme. If that sum had been handed over it would have been listed on the register.

Mr Morales, unlike Mr Picou and Mr Grant, was not in the gratuity scheme in 1962 and there are no records of the sum of \$505.09 ever having been handed over. In Mr Picou's case, the register reflected the payment of \$527.87 being credited to him when he moved from the gratuity scheme to the Shipping Association Pension Plan. In the case of Mr Grant, the sum of \$410.77 was credited to him as representing the value of his back-service as at 1962. In the plaintiff's case he would have left the gratuity scheme when he went to Geo F Huggins in 1961 and he was never a member of the Shipping Association Pension Plan.

As to the payment of the sum of \$1,827.88 to Mr Dougan, she stated that Mr Dougan as personnel manager was never authorised to accept money on behalf of the Port Contractors Limited Pension Plan, nor was he authorised to make any determination for any back-service to be credited to the plaintiff. That was a decision for the Management Committee.

Under cross-examination by Mr Benjamin, Mrs Toussaint stated that there was a Management Committee in 1969. At that time that committee dealt only with the daily-paid workers pension plan, since the monthly paid pension plan was

launched in 1974 with retroactive effect to 1969. The same committee oversaw the staff pension plan and was responsible for its formulation in 1974. She did not know what became of the cheque submitted by Mr Dougan to the Chief Accountant. She could not recall if there was ever a reply to Mr Morales' letter at Exhibit "A-3.

In answer to the court's question whether any enquiries were made of the cheque, Mrs Toussaint opined that the cheque most likely would have remained in the Port Contractors Limited accounts. I did not understand her to mean that the cheque was encashed. She added that her records do not reflect that a cheque, along with the plaintiff's letter, being passed to the Management Committee. The records also do not reflect what happened to the cheque after it was passed to the Chief Accountant by Mr Dougan.

## **Findings**

### **Service from February 1940 to March 1963**

The broad issue with respect to this period of the plaintiff's service was whether the plaintiff was a member of the Shipping Association gratuity scheme and if so, for what period. It is membership to this scheme which is critical to Mr Morales' claim. There were two subsidiary issues.

- (a) was the plaintiff a member of the Shipping Association Pension Plan for daily-paid employees when it was established in March 1962; and
- (b) when did the plaintiff commence monthly paid employment at Geo F. Huggins & Company Limited.

The plaintiff contended that he became a member of the gratuity scheme by the payment of the sum of \$505.09 into the scheme. The onus of proof was on the plaintiff to provide cogent evidence of such membership. He could provide none. There was no evidence, documentary or oral, of when payment was made, to whom and by whom. He provided no specific month or date. Much of his

evidence was imprecise and generalised. The first defendant, however, provided a register of names of persons whom it alleged were members of the gratuity scheme and of the sums of money which were credited to them for back-service in 1962 when the Shipping Association Pension Plan was introduced.

The supporting witnesses for the plaintiff, Mr Picou and Mr Grant, were both shown to be members of the gratuity scheme. Both their names appeared on the register with the consequence that all back-service accruing to them including, in Mr Picou's case, casual labour, was taken into account and credited to them when the Shipping Association Pension Plan was started. Their evidence actually supported the defendant's case.

Moreover, Mr Morales contended that he paid five percent of his earnings towards the gratuity scheme. Nothing by the way of receipts, company deductions or any other form of documentary evidence was produced to support him. Such evidence as provided by Mr Dougan was speculative. Further, he was forced to admit by Mr Prescott in cross-examination that he had no personal knowledge of Mr Morales' work experience. Mr Picou's and Mr Grant's evidence in support did not corroborate the alleged payment of the sum of \$505.09, which purportedly purchased his back service.

As to the question of the date of commencement of Mr Morales' monthly employment with Geo F. Huggins & Company Limited, again there was great imprecision in the plaintiff's testimony. He could point only to the year 1963. No date or month was identified. Confronted with Exhibit "A-5" which certifies his date of commencement of employment at that company as 1<sup>st</sup> April, 1961, Mr Morales conceded that this could have been the date. There was no evidence to contradict Exhibit "A-5" and I accept that the plaintiff's date of employment as a monthly paid employee at Geo F. Huggins & Company was 1<sup>st</sup> April, 1961, with the consequence that he was not a member of the Shipping Association Pension Plan when it was formed in 1962. I also find that he was not a member of the

gratuity scheme before 1962, since he was casually employed prior to acceptance of his monthly paid employment at Geo F. Huggins & Company.

(c) **Period of service from 1961 to 1969 at Geo F Huggins**

Before proceeding to address this issue, I would like to address the evidence of Mr Morales with respect to the “*surrender*” of his endowment policies with Standard Life Assurance Company. Mr Morales’ evidence was not always clear, but it seems to me on examination of Exhibit “A-8” that the policies were never surrendered. Exhibit “A-8” is a letter from Guardian Life of the Caribbean Limited addressed to the secretary of the Monthly Staff Pension Plan concerning the plaintiff’s retirement benefits while employed at Geo F. Huggins & Company. From my reading of that letter and Exhibit “A-2”, it appears that upon the plaintiff’s departure from Geo F. Huggins & Company that the policies were handed over to the plaintiff and were not surrendered. This is consistent with Mr Morales’ testimony in re-examination that he continued paying the policies after the sum of \$1,827.88 was paid to Mr Dougan. It appears as well from Exhibit “A-3” that the plaintiff paid the equivalent of the surrender value of the policies. As Exhibit “A8” indicates, the policies matured in 1984 and the proceeds paid to Mr Morales on the date of maturity.

I turn to the other issue in this case, and that is, whether there was any purchase of the plaintiff’s service at Geo F. Huggins & Company when he began employment at Port Contractors Limited. I have already held that the plaintiff was not a member of the gratuity scheme or the Shipping Association Pension Plan. The back-service of members of the gratuity scheme and later of the Shipping Association Pension Plan were honoured by Port Contractors Limited when these workers joined its employment in 1969.

Mr Morales asserts that his back-service was purchased by his handing over of the sum of \$1,827.88 to Mr Dougan. The onus was on the plaintiff to prove that this

resulted in his back-service being accredited to him while in the employ of the Port Contractors Limited. The issue is what governed the determination of “*pensionable service*” and what authority did Mr Dougan have to bind the defendants in the acceptance of the sum in question.

In my judgment what constitutes “*pensionable service*” is governed by the trust deed and the relevant rules of the pension plan for monthly paid employees of Port Contractors Limited. To the extent that the plaintiff paid the sum to Mr Dougan, he must demonstrate that such was provided for by the trust deed and the rules, or, that the Management Committee accepted the sum into the pension plan. It is a necessary corollary that he must also demonstrate that Mr Dougan was acting on behalf of the Management Committee when he accepted the sum from the plaintiff. An examination of the trust deed and relevant rules, in particular, clause (m) of the definition clause and Rule 3 of the Pension Rules, indicates no provision is made for the purchase of back-service in the manner effected by Mr Morales. Nor has it been demonstrated that the committee held out any promise or in any way waived the Pension Rules so as to give rise to an estoppel. I accept the evidence of Mrs Toussaint that the sum of \$1,827.88 never reached the Management Committee. I also accept her evidence that Mr Dougan was not authorised to act on behalf of the Management Committee nor did the administration of pensions fall within his portfolio as personnel manager.

In my judgment, there was never any decision by the managing director, Port Contractors Limited to accept the equivalent of the surrender value of the plaintiff’s two insurance policies, for the purchase of his back-service and I reject the evidence of Mr Dougan in its entirety. He was acting unilaterally and without the authority of the Board of Directors.

It seems to me that the plaintiff was well aware that it was the Management Committee which oversaw admissibility to the Pension Plan since he attempted to submit the sum of \$1,827.88 to the committee by his letter of December 6, 1973. The plaintiff’s letter to the Management Committee is couched in terms which

suggest that he is acting unilaterally and seeking the approval of the committee for the purchase of his back-service. That letter was not accepted, since the cheque was re-routed to the Chief Accountant by Mr Dougan by his memorandum dated February 22, 1974. When his cheque was not accepted, he sought the assistance of Mr Dougan whom he well knew was not authorised to bind the committee. My verbatim note of Mr Morales' cross-examination on this aspect is instructive.

*Put I suggest that Mr Dougan was not a member of the Management Committee of the Port Contractors Pension Plan.*

*Ans. That is not my business. I don't know.*

*Q. Ought you not to have paid it [the sum of \$1,827.88] to the plan?*

*Ans. No! I paid it to Mr Dougan, the Personnel Manager of Port Contractors Limited/Port Authority.*

*Q. It was important to you that the money should be put into the scheme?*

*Ans. Where the money went is not my business. I made sure and paid to Mr Dougan. I can't remember the year I paid the \$1,800 plus but I paid it over as soon as I got it."*

Mr Morales added that:

*"I had no discussion with Mr Dougan on the fact that my money was being paid so that my pension would continue ... all he told me was that my pension would continue."*

It is clear from this exchange that the plaintiff paid little regard to the rules governing membership and the administration of the Port Contractors Limited Pension Plan and wrongly placed his faith in Mr Dougan in his role as Personnel Manager, notwithstanding that he was not a member of the Management Committee of the Port Contractors Limited Pension Plan.

I find that the plaintiff's pension benefits at Geo F. Huggins & Company were covered by the two life insurance policies with Standard Life Assurance Company

and that on the termination of his employment there in 1969, these policies were handed over to him as his terminal benefits. As Exhibit "A-8" indicates, these policies matured in 1984 upon his attaining the age of sixty years in 1984 and the proceeds paid to him.

The plaintiff chose to keep these policies in existence until maturity, while attempting to purchase his "*back-service*" by the submission to the committee of the equivalent of their surrender value; an attempt to enjoy the best of both worlds. To succeed, the plaintiff must provide clear and cogent evidence of the acceptance of that sum by the Management Committee. He has not.

### **Summary**

- (1) There has been no credible evidence led by the plaintiff to support his oral evidence of the payment of the sum of \$505.09 on his behalf to cover the back services of the plaintiff for years 1940 – 1953.
- (2) The plaintiff has adduced no credible or sufficient evidence to show that he was a member of the gratuity scheme or of the Shipping Association Pension Scheme or of when he did so become.
- (3) On the evidence before me, I therefore find that the plaintiff was not a member of the Shipping Association Gratuity Fund nor of the Shipping Association Pension Scheme.
- (4) Mr Uric Dougan was incompetent to make any representation that was binding on the trustees or the Management Committee of the Port Contractors Limited Pension Plan for monthly paid employees.
- (5) The plaintiff led no credible evidence to prove that the Management Committee retained the sum of \$1,827.88 which he purported to pay for the purchase of back-service. I accept the evidence of the defendants' witness Elva

Toussaint that money paid to the plan is normally paid to the trustees and that Mr Dougan, the personnel manager had no authority to accept the sum of \$1,827.88. Mr Dougan could not make any representation which would bind the trustees or the Management Committee of the plan.

- (6) I reject in its entirety the evidence of Mr Dougan which was adduced in support of the plaintiff's claim. In my judgment, his evidence was not at all credible and was given in defence of his dual role as both personnel manager and the plaintiff's attorney at law.

I entertain considerable sympathy for the plaintiff's position, if only because he may have been of the mistaken impression that the non-return of the cheque meant that *his "back-service"* had been credited to him. While the issue of estoppel was argued before me, in view of my findings with respect to Mr Dougan's evidence and as to his status in accepting the sum of \$1,827.88, no question of estoppel arose. I was inclined, however, to ordering the return of the \$1,827.88 with interest at the investment rate but that did not form part of the relief sought by the plaintiff.

Moreover, it is unclear from the evidence whether that amount was drawn on the plaintiff's personal chequing account or was a manager's or certified cheque, or to whom it was made payable.

The plaintiff's writ of summons and amended statement of claim is dismissed with costs.

Dated this 17<sup>th</sup> day of December, 1999

NOLAN BEREAX  
Judge